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July 10, 2020

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VIA ECF AND EMAIL

Honorable James J. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: In re Orly Genger, Case No. 19-13895-jlg

Dear Judge Garrity:

We write on behalf of Orly Genger (the “Debtor”) to inform the Court that creditor/movant Sagi Genger -- who has taken six depositions (out of seven so far) related to his pending motion to dismiss -- refuses himself to be deposed on the one date that he and his counsel proposed for his deposition (July 15th), which date was agreed by all parties who rearranged their schedules accordingly. Sagi refuses to appear for his deposition unless the parties agree “in writing” to his unilateral preconditions for this deposition, including (a) limiting it to one seven-hour deposition for both his testimony in his individual capacity and as the corporate representative for TPR Investment Associates, Inc., even though the company has distinct interests that are not and cannot be identical to Sagi’s; and (b) all parties “will not seek to recall Sagi based on the Court’s discovery rulings,” even though the various discovery disputes, including the common interest privilege issue being briefed today are likely not going to be resolved by next week. Mr. Dellaportas has refused to relent on this one-sided demand despite, as a practical matter, it makes much more sense to take his testimony so that all parties may reassess based on the actual record whether there are any remaining issues to be addressed with the Court (which of course all parties reserve their rights on, as is customary). We pointed out that Sagi may designate whatever portions of his deposition as he deems fit to be binding on TPR -- a practice that the parties have already previously used in this case. (For example, portions of the testimony by Eric Herschmann on specified topics were designated as binding on the creditor law firm Kasowitz Benson Torres LLP.)

No other party or witness in this case has insisted on preconditions, as Sagi has done here, and Sagi should not be permitted to obstruct discovery in this way. We ask, simply, that Sagi be ordered to appear as he previously agreed and as noticed for his deposition starting at 9:30 am on July 15, 2020. Joining in this request is creditor Kasowitz Benson Torres LLP.

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Respectfully submitted,

/s/ Yann Geron
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/s/ Michael P. Bowen
KASOWITZ BENSON TORRES LLP

cc: All Counsel of Record (via ECF)